IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1986 OF 2005

IN

SUIT NO. 1827 OF 2005

Smt. Pramila Lalbhai
Dabhoya .. Plaintiff.

vs.

Dr. Harish Lalbhai
Dabhoya. .. Defendant.

Mr. M.K. Nesari for the plaintiff.
Mr. H.S.S. Murthy for defendant.

CORAM : S.U.KAMDAR, J.

DATE : 16th August, 2005.

P.C.

. By consent of the parties, motion is made returnable forthwith. Motion is heard finally. It is an admitted position that the plaintiff is not in possession of the property namely bungalow 'Advait standing on Plot No. 45 and CTS No. 1998/150 in Abhinav Co-operative Housing Society Limited at Borivli (East), Mumbai 400 066 and that the defendants are in possession thereof. Inspite of the aforesaid, by the prayers in the motion the

plaintiff is seeking that the defendant should be restrained from entering upon and/or remaining upon the premises, namely, ground floor premises of the bungalow 'Advait standing on Plot No. 45 and CTS No. 1998/150 in Abhinav Co-operative Housing Society Limited at Borivli (East), Mumbai 400 066 thus in effect he is seeking eviction of defendant at the ad-interim stage. In my opinion, the cumulative effect of prayer clauses (a) and (b) is to dispossess the defendant and the plaintiff should be permitted to come into possession of the suit premises. In view of the admitted position that the defendant is in actual physical possession of the premises, neither of the relief of the nature sought for by prayer clauses (a) and (b) of the notice of motion can be granted at the ad-interim or interim stage. Motion dismissed. No order as to costs.